

**Antonio Arenas, Robert Arenas and Jose Arenas,  
d/b/a Royal Baking Company and Bakery,  
Confectionery and Tobacco Workers' Inter-  
national Union, AFL-CIO, CLC, Local No. 24.  
Case 20-CA-24526**

September 30, 1992

## DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on March 12, 1991 (amended on April 24 and May 20, 1992), the General Counsel of the National Labor Relations Board issued a complaint against Antonio Arenas, Robert Arenas and Jose Arenas, d/b/a Royal Baking Company, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On September 14, 1992, the General Counsel filed a Motion for Summary Judgment. On September 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated August 20, 1992, the Deputy Regional attorney for Region 20 notified the Respondent that unless an answer was received by August 27, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a partnership with an office and place of business in San Francisco, California, has been engaged in the baking industry in the wholesale and retail sale of bread. During the calendar year ending December 31, 1991, a representative period, the Respondent, in the course and conduct of its business, derived gross revenues in excess of \$500,000, and during the same period, purchased and received at its San Francisco, California facility, in the course and conduct of its business, products, goods, and materials valued in excess of \$1500 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

Since on or about May 4, 1986, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and has, since then, been recognized as such by the Respondent in successive collective-bargaining agreements, the most recent of which is effective by its terms from July 2, 1989, to July 4, 1992. At all times since May 4, 1986, the Union, pursuant to Section 9(a) of the Act, has been the exclusive representative of the unit employees. The appropriate bargaining unit consists of:

All employees performing work covered by the 1989-1992 collective bargaining agreement between Respondent and the Union.

Sometime between October and December 1991, and in March 1992, the exact dates being presently unknown, the Respondent told employees they would be fired if they contacted the Union for any reason. The Respondent also, on an unknown date in March 1992, told employees that an employee would no longer be employed because that employee had joined the Union, and told employees that any new employee who joined the Union would be fired. By engaging in such conduct, we find that the Respondent has violated Section 8(a)(1) of the Act, as alleged.

On about March 10, 1992, the Respondent discriminated against employee Alfredo Moncado because he assisted and supported the Union and engaged in concerted activities, and to discourage employees from engaging in such activities. We find that by engaging in such conduct, the Respondent has violated Section 8(a)(3) and (1) of the Act, as alleged.

On about September 13, 1991, the Respondent, without the Union's consent, failed to continue in effect all the terms of its 1989-1992 contract with the Union by (1) failing and refusing to make appropriate contributions to the pension and health and welfare funds, (2) failing and refusing to implement wage increases, and (3) failing and refusing to implement a night-shift differential in wages as provided for in the agreement. The above constitute mandatory subjects of bargaining. We find that by engaging in the above-described conduct, the Respondent has violated Section 8(a)(5) and (1) of the Act, as alleged.

#### CONCLUSIONS OF LAW

1. By telling employees they would be fired if they contacted the Union for any reason, telling them that an employee would no longer be employed because the employee joined the Union, and telling them that any new employee who joined the Union would be fired, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discriminating against employee Alfredo Moncado because he assisted and supported the Union and engaged in concerted activities, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. By failing to continue in effect all the terms of its 1989-1992 agreement with the Union by failing and refusing to make appropriate pension, health, and welfare fund contributions, failing and refusing to implement wage increases, and failing and refusing to implement a night-shift differential in wages, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to continue in effect all the terms and conditions of employment set forth in the 1989-1992 agreement with the Union, and to make all appropriate contributions to the pension, health, and welfare funds that it has not made since about September 13, 1991,<sup>1</sup> and implement the wage increases and night-shift differential in wages that the Respondent failed to implement on about the same date. We shall also order the Respondent to make whole unit employees for any expenses or losses they

may have incurred as a result of the Respondent's failure to continue in effect all terms of its 1989-1992 contract with the Union, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, the Respondent shall be ordered to make whole employee Alfredo Moncado for any losses he may have sustained as a result of the Respondent's discrimination against him.<sup>2</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Antonio Arenas, Robert Arenas and Jose Arenas, d/b/a Royal Baking Company, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in effect the terms and conditions of its 1989-1992 collective-bargaining agreement with Bakery, Confectionery and Tobacco Workers' International Union, AFL-CIO, CLC, Local No. 24, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, by failing and refusing, since about September 13, 1991, to make appropriate contributions to the pension, health, and welfare funds, and failing and refusing, since about the same date, to implement wage increases and a night-shift differential in wages. The appropriate bargaining unit consists of:

All employees performing work covered by the 1989-1992 collective bargaining agreement between Respondent and the Union.

(b) Discriminating against Alfredo Moncado or any other employee because he assisted and supported the Union and engaged in concerted activities, in order to discourage employees from engaging in such activities.

(c) Telling employees they would be fired if they contacted the Union for any reason, telling them an employee would no longer be employed because that employee joined the Union, and telling them that any new employee who joined the Union would be fired.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect all the terms and conditions of employment set forth in the 1989-1992 agreement

<sup>1</sup>Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

<sup>2</sup>The complaint does not specify the exact nature of the discriminatory conduct engaged in by the Respondent against Moncado. Accordingly, we leave it to the compliance stage of the proceeding to determine what, if any, reinstatement, monetary, and/or other relief is needed to remedy the Respondent's discriminatory treatment of Moncado.

with the Union, and make whole unit employees by making all contributions to the pension, health, and welfare funds that have not been made since about September 13, 1991, by implementing the wage increases and the night-shift differential in wages that have not been implemented since about the same date, and by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms of its agreement with the Union, with interest in the manner described in the remedy section of this decision.

(b) Make whole employee Alfredo Moncado by providing him with reinstatement, backpay, and/or any other relief to which he may be entitled as a result of the Respondent's discrimination against him, as determined during the compliance proceeding.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

<sup>3</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to continue in effect all the terms and conditions of employment set forth in our 1989–1992 collective-bargaining agreement with Bakery, Confectionery and Tobacco Workers' International Union, AFL–CIO, CLC, Local No. 24, which is the designated exclusive bargaining representative of our employees in an appropriate bargaining unit, by, among other things, refusing to make the appropriate contributions to the pension, health, and welfare funds, and refusing to implement wage increases and a night-shift differential in wages since about September 13, 1991. The appropriate bargaining unit consists of:

All employees performing work covered by the 1989–1992 collective bargaining agreement between Respondent and the Union.

WE WILL NOT tell employees that they will be fired if they contact the Union for any reason, that an employee would no longer be employed because that employee joined the Union, and that any new employee who joined the Union would be fired.

WE WILL NOT discriminate against Alfredo Moncado or any other employee because he assisted and supported the Union and engaged in concerted activities, in order to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect all the terms and conditions of employment set forth in our 1989–1992 collective-bargaining agreement with the Union, and WE WILL make whole unit employees by making all appropriate contributions to the pension, health, and welfare funds that have not been made since about September 13, 1991, by implementing the wage increases and night-shift differential in wages that have not been implemented since about the same date, and by reimbursing, with interest, unit employees for any expenses or losses they may have incurred as a result of our failure and refusal to continue in effect all the terms of the agreement.

WE WILL make whole employee Alfredo Moncado by providing him with relief to which he may be entitled because of our discrimination against him.

ANTONIO ARENAS, ROBERT ARENAS  
AND JOSE ARENAS, D/B/A ROYAL BAK-  
ING COMPANY